

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM GARCIA,

Plaintiff,

vs.

AMY MILLER, et al.,

Defendants.

CASE NO. 14cv2266-LAB (BGS)

**ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

State prisoner William Garcia brings this civil rights action under 42 U.S.C. § 1983 against several prison employees. (Docket no. 34 at 1.) He submitted his claim through the administrative grievance process, but filed this lawsuit before the process finished. (*Id.* at 3.) Defendants have moved for summary judgment, arguing that Garcia failed to exhaust administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). (Docket no. 25.) Magistrate Judge Skomal issued a Report and Recommendation (R&R), urging that Defendants' motion be granted (Docket no. 34.) Garcia objected to the R&R, admitting he "made an inadvertent mistake" by filing early, but arguing that he will suffer harm if he is forced to file a new lawsuit. (Docket 39 at 1–3.)

A district court has jurisdiction to review a magistrate judge's R&R on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the court

1 may accept, reject, or modify, in whole or in part, the findings or recommendations made by
 2 the magistrate judge." 28 U.S.C. § 636(b)(1).

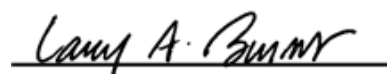
3 Summary judgment is proper if the pleadings, depositions, answers to interrogatories
 4 and admission on file, together with the affidavits, demonstrate that there is no genuine issue
 5 as to any material fact and that the moving party is entitled to judgment as a matter of law.
 6 Fed. R. Civ. P. 56(c). If the moving party shows that there is an absence of evidence to
 7 support the non-moving party's claims, the burden shifts to the non-moving party resisting
 8 the motion to "set forth specific facts showing that there is a genuine issue for trial."
 9 *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 256 (1986).

10 The Court construes Garcia's pleadings liberally. *Balistreri v. Pacifica Police Dep't*,
 11 901 F.2d 696, 699 (9th Cir. 1988). The Court is not, however, required to "comb the record
 12 to find some reason to deny a motion for summary judgment," simply because the plaintiff
 13 is proceeding *pro se*. *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001)
 14 (internal quotation marks omitted).

15 The PLRA contains a strict requirement that prisoners must exhaust administrative
 16 remedies before challenging prison conditions in federal court. 42 U.S.C. § 1997e(a). "Once
 17 within the discretion of the district court, exhaustion in cases covered by § 1997e(a) is now
 18 mandatory." *Porter v. Nussle*, 534 U.S. 516, 524 (2002). Garcia admits he didn't exhaust
 19 his administrative remedies, so the Court can't allow him to proceed with this lawsuit. The
 20 Court **ADOPTS** the R&R. The Defendants' motion for summary judgment (Docket no. 25)
 21 is **GRANTED**. Garcia's motion for preliminary judgement (Docket no. 32) is **DENIED** as
 22 moot.

23 **IT IS SO ORDERED.**

24
 25 DATED: October 1, 2015

26 

27 **HONORABLE LARRY ALAN Burns**
 28 United States District Judge